SUPREME COURT, U.S.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1956

No. 297

CHOW BING KEW,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit.

ARCHIBALD M. MULL, JR.,
Crocker-Anglo Bank Building,
Sacramento 14, California,
FORREST E. MACOMBER,
711 Bank of America Building,
Stockton, California,
KENNETH G. McGILVRAY,
Forum Building, Sacramento, California,
Counsel for Petitioner.

ARTHUR J. PHELAN,
1210 Mills Tower,
San Francisco 4, California,
Of Counsel.

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To the Honorable Earl Warren, Chief Justice of the Supreme Court of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above-entitled case on May 20, 1957.

OPINIONS BELOW.

The opinion of the District Court, entitled "Ruling on Motions for Judgment of Acquittal" (R.5-14) is officially reported in 141 Fed. Suppl. 253. The opinion of the United States Court of Appeals for the Ninth Circuit (R.198-203) has not as yet been officially reported. The latter opinion and the judgment of the Court are printed in Appendix A, infra, pp. i-ix.

JURISDICTION.

The judgment of the United States Court of Appeals was dated May 20, 1957 and was entered on that date (R. 204). Petition for rehearing was denied on June 18, 1957 (R.205). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED.

Where, after the decision of this Court in the *Hartzel* case,[1] Congress in the 1948 revision substituted the word "willfully" for the word "knowingly" in 18 USCA Section 911:

1. Can a conviction stand where the indictment charges that the petitioner did "knowingly" falsely represent himself to be a citizen of the United States without charging him with "willfully" doing so, and where the trial court (sitting

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[1] *Hartzel v. United States*, 322 U.S. 680, 64 S. Ct. 1233, 88 L. Ed. 1534.

without a jury) found that the offense could be constituted from carelessness of the defendant in signing unread a business document which contained such a representation?

2. Could the Court of Appeals disregard the trial court's erroneous conclusion that the offense could be constituted from carelessness, and sustain the conviction on the basis that proof of other misrepresentations by petitioner could negate the defense of ignorance?

3. Did the Court of Appeals further compound the error of the trial court by holding that no fraudulent purpose nor pertinency of the statement need be shown?

STATUTE INVOLVED.

The statute involved is 18 USC Section 911 which provides as follows:

> "Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined not more than $1,000 or imprisoned not more than five years, or both."

STATEMENT OF THE CASE.

Petitioner was convicted by the District Court (sitting without a jury) under an indictment which charged that he knowingly and unlawfully falsely

represented himself to be a citizen of the United States.[2] In the language of the trial court:

> "The Government's proof on this count consisted of an application for a California alcoholic beverage license filed January 18, 1952, signed by the defendant. In response to a question contained in the application, 'Are you a citizen of the United States?' the word 'yes' had been typed. Defendant admits he is not a citizen of the United States." (R.5)

A reproduction of the application appears in the record (R.30).[3] It was made on behalf of the Daylite Markets, a partnership (R.97-98, 100-101). The circumstances of its execution are thus stated in the opinion of the Court of Appeals:

> "One Helton, who was supervisor of the partnership's many stores, seeking a renewal of the five dollar state license to sell alcoholic beverages at the partnership's Oakley store applied therefor to the office of the State Board of Equalization at Martinez. Helton testified that a clerk in the office of the Board typed up an application form to be signed by appellant, and advised Helton that the form required the verified signature of a member of the partnership. Although California law requires that the names of all partners appear on the form, only appellant's name was typed thereon by the clerk who further typed 'yes' on the form in answer to the printed question. 'Are you a

[2]Conviction on another count was reversed by the Court of Appeals for failure to charge petitioner with an offense.

[3]The deletions and interlineations thereon were made sometime after it was filed with the State licensing authorities (R. 99).

citizen of the United States?' Helton stated he then took the filled-in application to appellant's office where, without reading it, appellant signed it. Thereafter Helton took it to a notary who signed the form's verification though appellant never appeared before him. Helton thereafter mailed it to Sacramento" (R.201).

Petitioner was a partner in the concern, and as president of several corporations was engaged in various legitimate business enterprises (R.110, 131). He signed two or three hundred business documents a week (R.125). This particular application was for an "Off Sale Beer and Wine" license (R.30, 99). The law of California (Business and Professions Code, Section 23788) does not require that a holder of this particular type of license must be a citizen (R.5).[4] The partnership held a sales permit issued by the Board of Equalization which showed the names of the partners (R.155), some of whom were citizens (R.154-155), and in the application itself (R.30) the Board's clerk typed a specific reference to this Seller's Permit No. C-64064. It was thus well known to be concerned that this application was for the Daylite Markets and not for petitioner personally.

Petitioner waived a jury and on May 28, 1956 the District Court filed (a) its decision entitled "Ruling

[4]Since citizenship of the applicant for the "Off Sale Beer and Wine" license was immaterial under the law, the question relative thereto was inapplicable, and the Board clerk who typed the form could have omitted that particular item, as several other inapplicable items were omitted (R. 30).

on Motions for Judgment of Acquittal" (R.5-14), and (b) its "Judgment" reading as follows:

"Judgment

"In accordance with the findings of fact and conclusions of law contained in the ruling on motions for judgment of acquittal filed herein, it is the judgment of the court that the defendant is guilty as charged in counts one and two of the indictment.

"Further, it is ordered that the defendant be referred to the Probation Office for a presentence report, and the time of sentence is tentatively set for June 26, 1956, at 2 p.m. in the United States Courthouse in Sacramento, California" (R.14-15).

The said findings of fact and conclusions of law contain the finding and conclusion that petitioner "is in no position to relieve himself of criminal responsibility because of claimed ignorance. On the contrary, his brash carelessness, if such be the case, emphasizes his criminality" (R.8).

Thereafter, on June 26, 1957, the Court pronounced sentence of eighteen months' imprisonment and $1,000 fine on this count and filed a "Judgment and Commitment" (R.20-22) reciting the conviction and sentence.

The Court of Appeals affirmed the conviction on this count, holding that although the mere signed document did not itself prove willfulness, evidence of other misrepresentations described in the opinion was admissible to negate petitioner's contention that he signed it inadvertently (R.202; Appendix A, infra, p. vi), that

the trial court had made a finding of willfulness in that the "Judgment and Commitment" entered on June 26, 1956 recited (R.21) that petitioner had been convicted of the offense of violation of 18 USC 911 in that he " * * * did knowingly and unlawfully falsely represent himself to be a citizen of the United States. * * *" (R.203; Appendix A, infra, p. viii), that a fraudulent purpose was not necessary to the offense charged and that "willfully" as used in Section 911 means only that it must be proved beyond a reasonable doubt that the misrepresentation was voluntarily and deliberately made (R. 200; Appendix A, infra, p. iv).

REASONS FOR GRANTING THE WRIT.

The decision of the Court of Appeals is in conflict with applicable decisions of this Court. Where the word "willful" appears in a criminal statute, it implies not only knowledge of the thing but a determination with a bad intent to do it; i.e., "knowledge and a purpose to do wrong" (*Spurr v. United States*, 174 U.S. 728, 19 S. Ct. 812, 815, 43 L. Ed. 1150). It means an act done with a bad purpose and evil intent (*United States v. Murdock*, 290 U.S. 389, 54 S. Ct. 223, 78 L. Ed. 381). The requirement of a specific intent springs from the statutory use of the word "willful," and thoughtlessness, carelessness, or even recklessness are not substitutes for the more specific state of mind which the statute makes an essential ingredient of the crime (*Hartzel v. United States*, supra). The trial court and the Court of Appeals fell into the error con-

demned by this Court in *Morissette v. United States*, 342 U.S. 246, 72 S. Ct. 240, 96 L. Ed. 288, of enlarging the reach of an enacted crime by constituting it from something less than the incriminating components contemplated by the words used in the statute.

The Court of Appeals was in error in concluding that the trial court had made a finding of willfulness. The Court of Appeals based its conclusion in that respect on the recital in the so-called "Judgment and Commitment" entered on June 26, 1956 (R.20-22), that the defendant had been convicted of "knowingly and unlawfully" falsely representing himself to be a citizen. As shown under the preceding subdivision of this petition, this was a mere recital (at the time of imposing sentence) of the steps previously taken by the court, and happened to be couched in the language of the indictment. The Judgment entered on May 28, 1956 constituted the finding of guilt and was expressly based upon the "findings of fact and conclusions of law contained in the ruling on motions for judgment of acquittal" (R. 14-15). Those findings of fact and conclusions of law contain the express conclusion that petitioner "is in no position to relieve himself of criminal responsibility because of claimed ignorance. On the contrary, his brash carelessness, if such be the case, emphasizes his criminality" (R. 8).

> "When such a misapprehension of the law has led both courts below to adjudicate rights without considering essential facts in the light of the controlling law, this Court will vacate the judgments and remand the case to the District Court for

further proceedings consistent with principles laid down in this Court's opinion."

Maggio v. Zeitz, 333 U.S. 56, 77, 68 S. Ct. 401, 412, 92 L. Ed. 476, 492.

Not only did the Court of Appeals ignore the error of the trial court in concluding that the offense could be constituted from carelessness, but the indictment itself failed to allege the statutory ingredient of willfulness and that essential ingredient appears to have been lost sight of throughout the entire proceedings. In this respect the decision is not only in conflict with the applicable decisions of this Court, but is in conflict with the decisions of other Circuits holding that where the word "willful" is used in the statute its omission from an indictment is fatal. (*Martiney v. United States* (CA 10) 218 F. 2d 256, Cert. denied 348 U.S. 953, 75 S. Ct. 442, 99 L. Ed. 745; *Pullen v. United States* (CA 5) 164 F. 2d 756.)

A mere subsequent recital by the trial court (in the language of the indictment) that petitioner had been convicted of "knowingly" making the misrepresentation would not dispel the vice of the conclusion that carelessness was synonymous with guilt, particularly since the word "willfully" in a statute means something not expressed by "knowingly" (*United States v. Illinois Cent. R. Co.,* 303 U.S. 239, 242-243, 58 S. Ct. 533, 535, 82 L. Ed. 773; *Hartzel v. United States,* supra; *Spurr v. United States,* supra).

The Court of Appeals properly held that the mere signing of the document by petitioner was insufficient

to prove willfulness.[5] The Court, however, fell into the error of holding that proof of other misrepresentations by petitioner could supply the missing ingredient and could refute the defense (borne out by all the uncontradicted testimony) that he signed the particular document in question without reading it and without knowledge that it contained the representation charged. The Court held in effect that the lack of evidence that petitioner had made the representation at all, could be supplied by showing that he made other representations at other times, thus in effect convicting him of the offense charged on the basis of proof of other acts. While it is true that under certain circumstances, proof of similar acts is admissible as tending to prove intent, this is only so where the doing of the act charged has been established by other evidence, and the proof is received only as bearing upon the state of mind which accompanied the doing of the act. Here the act charged is not the signing of a document but the making of a representation. Proof of other acts can never prove the doing of the act itself (Cf. *Wigmore on Evidence,* (3rd ed.) Vol. II, pages 200, 257). Evidence of other representations made by petitioner at other times afforded no legal inference that he made the particular representation charged in the indictment, and he was entitled to be tried only for that offense (Cf. *Boyd et al. v. United States,* 142

[5]Any possible inference of willfulness arising therefrom disappeared when the defendant produced substantial evidence to the contrary (*Comm. of Internal Revenue v. Bain Peanut Co.* (CA 5) 134 F. (2d) 853, 855; *Silverton v. Valley Transit Co.* (CA 9) 237 F. (2d) 143).

U.S. 450, 458, 12 S. Ct. 292, 295, 35 L. Ed. 1077, 1080). That he was not so tried appears to be clear from the trial court's conclusion that his ignorance, if due to carelessness, "emphasizes his criminality" (R. 8). If petitioner was ignorant of the fact that the representation was contained in the document, even though he were careless in signing it unread, no "criminality" would be involved, and there would be no "criminality" which could be thereby emphasized.[6]

The error of the Court of Appeals goes far beyond merely an erroneous evidentiary ruling. The Court of Appeals, disregarded the fact that in the trial court the petitioner was tried and adjudged guilty upon the fictitious issue of carelessness rather than upon the statutory issue of willfulness. In this respect we submit that the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and has so far sanctioned such a departure by the trial court as to call for an exercise of this Court's supervision.

The Court of Appeals in its decision has also decided an important question of Federal law which has not been, but should be, settled by this Court. The decision of the Court of Appeals not only holds that to constitute a violation of 18 USC 911, no fraudulent purpose is required to be shown, but in effect has gone further and determined that a false representation as

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[6]Other remarks of the trial court (R. 180-181) in denying probation and imposing sentence also indicate that the court was unconsciously influenced by considerations other than petitioner's connection with the particular offense charged.

to citizenship, even though made in a matter in which it is entirely immaterial, would constitute a violation of that Section.

The Court of Appeals has rested this interpretation largely upon cases construing the former statute (8 USC, former Sec. 746). The Court has disregarded the significance of the statutory change in 1948 which substituted the word "willfully" for the word "knowingly." In substituting the word "willfully" for the word "knowingly" in the statute, Congress could not have been unaware of the fact that this Court in the cases heretofore cited had interpreted the word "willfully" as requiring a specific intent and purpose not expressed by the word "knowingly." It is true that in the 1940 enactment (8 USC, former Sec. 746) Congress had dropped the words "for any fraudulent purpose" from the earlier statute and had simply provided that the representation must be knowingly and falsely made. However, when Congress in the 1948 enactment of the statute in its present form substituted the word "willfully" for the word "knowingly" it quite obviously intended to embrace the ingredient of bad intent or wrongful purpose.

Congressional history supports the view that in the 1948 revision of Title 18 USC by the substitution of the word "willfully" for "knowingly" it was intended to include as an essential element a fraudulent intent as well as a material purpose; i.e., in a material matter. (See House Report No. 304, 80th Congress; Report from the Committee on Revision of Title 18.): In Section 912, the words "with the intent to defraud

the United States or any person" contained in said Section 76 of Title 18 USC, 1940 edition, were omitted as meaningless, in view of *United States v. Lepowitch,* 63 S. Ct. 914, 318 U.S. 702; in Section 2273, the words "with intent to destroy the same, sets fire to any such vessel, or otherwise" following "willfully" and preceding "attempts" were omitted as surplusage; in Section 2314, the words "or with intent to steal or purloin, knowing the same to have been so stolen, converted or taken" were omitted as surplusage since property so "taken" is "stolen" and insertion of the word "knowingly" after "whoever" at the beginning of Section renders such omission possible.

The effect of the decision below is to sustain a conviction under 18 USC Section 911 without either allegation or proof of the statutory ingredient of willfulness, to sustain a conviction for willful misconduct where the trial court found that carelessness would suffice and to hold that neither materiality, fraudulent intent or bad purpose is required to be shown, even though willfulness is a statutory ingredient of the offense charged. Such a holding conflicts with applicable decisions of this Court and of Courts of Appeals in other Circuits, as hereinabove pointed out. It also involves an important question of Federal law, to wit, the proper interpretation and scope of 18 USC Section 911, which has not been settled by this Court, and which should be settled.

The application given to this statute by the courts below would make possible the conviction of any business man who happened inadvertently to sign a docu-

ment containing some material of which he was unaware, if such material were found to be untrue. The need for clarification of the scope of the statute appears to be pressing, in view of the interpretation given to it in the instant case. That interpretation goes to the extent of applying it to a situation wherein the material has been supplied by persons other than the defendant, wherein the particular statement had neither pertinency nor the sanction of any official requirement,[7] wherein the particular question on the form was in fact entirely immaterial to the type of license which was being applied for, and in effect would apply the statute to any representation however careless, inadvertent or innocuous, even where the statement could have had no possible effect upon the matter in which it was made.[8]

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[7]The very recent decision of this Court in *Watkins v. United States* (decided June 17, 1957) 25 L. W. 4510, demonstrates that individuals are not to be subjected to criminal penalties for ostensible transgressions arising out of irrelevant inquiries directed to them by some public instrumentality where the question is in no way related to the subject-matter involved.

[8]The legislature of California has laid down California public policy in enacting the Alcoholic Beverage Control Act (Business and Professions Code, sec. 23000 et seq.) which requires that holders of "On Sale" (bar and restaurant) licenses must be citizens of the United States but which provides no such restriction relative to "Off Sale Beer and Wine" licenses, as many grocery stores usually dispense such beverages for consumption off the premises and many grocery storekeepers are non-citizens. The question referred to in the application form, therefore, had no pertinency whatever to the license being sought. The applicable provisions of the California statute are printed in appendix B, *infra*, p. x.

CONCLUSION.

In the interests of justice and much needed clarification of the statute involved here, as well as the proper interpretation of the word "willfully" when used in a criminal enactment of this nature, we respectfully submit that this petition for writ of certiorari should be granted.

Dated, San Francisco, California,
July 10, 1957.

ARCHIBALD M. MULL, JR.,
FORREST E. MACOMBER,
KENNETH G. MCGILVRAY,
Counsel for Petitioner.

ARTHUR J. PHELAN,
Of Counsel.

(Appendices A and B Follow.)

Appendix A

United States Court of Appeals for the Ninth Circuit

Chow Bing Kew,	Appellant,	No. 15,251
vs.		May 20, 1957
United States of America,	Appellee.	

Appeal from the United States District Court for the Northern District of California, Northern Division

Before: DENMAN, Chief Judge and BONE and FEE, Circuit Judges

DENMAN, Chief Judge:

Chow Bing Kew, hereafter Chow, appeals from his conviction in the District Court for the Northern District of California, Northern Division, of a violation of Section 911 of 18 U.S.C. in January, 1952 and of a violation of Section 1001 in April, 1953. He was sentenced to 18 months in prison for each of the two offenses, the sentences to run concurrently, and fined $1,000 on the first and $5,000 on the second. The case was tried without a jury and no findings were requested. F.R.Crim.P. § 23 (c).

The indictment, consisting of two separate counts, one charging the 1952 violation of Section 911, Title 18 U.S.C. and the other the 1953 violation of Section 1001, Title 18 U.S.C., reads as follows:

"THE GRAND JURY CHARGES:

Count One: That CHOW BING KEW, alias SAM WAHYOU, alias DONALD HAROLD WAHYOU, (hereinafter called "said defendant"), heretofore, to-wit: On or about January 18, 1952, at Stockton, County of San Joaquin, State and Northern Division of the Northern District of California, and within the jurisdiction of this Court, then and there being, did knowingly, and unlawfully falsely represent himself to be a citizen of the United States without having been naturalized or admitted to citizenship, or without otherwise being a citizen of the United States (18 U.S.C.A. 911).

THE GRAND JURY FURTHER CHARGES:

Count Two: That on or about April 14, 1953, at Stockton, County of San Joaquin, State and Northern Division of the Northern District of California, and within the jurisdiction of this Court, [no one] did unlawfully, knowingly, and wilfully falsify, conceal, and cover up by trick, scheme, and device a material fact and made a false, fictitious and fraudulent statement or representation to Roy R. Anderson, an investigator of the Immigration and Naturalization Service of the Department of Justice, a department of the United States, by telling him he was a citizen of the United States of America, knowing such statement or representation to be false, fictitious, and

fraudulent in that he was not a citizen of the United States of America. (18 USCA 1001.)

A TRUE BILL
/s/ Royse Clayton
Foreman"

Since no one is named as committing the crime in the second count, the district court had no jurisdiction in personam to try Chow.[1] Undoubtedly it was intended by the phrase "(hereafter called said defendant)" in the first count that the words "said defendant" would be inserted before the words "did unlawfully" etc., of the second count. The trial court cannot supply the omission and thus create jurisdiction. Nor can the defendant in effect indict himself by treating the second count as if he were therein named.

The judgment on this second count is reversed and is ordered dismissed.

1. *Did Chow make a Willfully False Representation of Citizenship in Violation of Section 911, Title 18, U.S.C.?*

Section 911, as far as pertinent, provides:

"Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined not more than $1,000 or imprisoned not more than three years, or both."

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[1] F.R.Crim.P §7 (c) provides that "The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law *which the defendant is alleged therein to have violated.*" [Emphasis supplied.]

In construing this statute it is pertinent that it was an amendment to a prior statute which had made wilfulness something that had to do with a wrongful purpose. That statute reads in pertinent part:

> ". . . whoever, for any fraudulent purpose whatever, shall falsely represent himself to be a citizen of the United States . . . shall be [punished]."
>
> 35 Stat. c. 321, § 79, p. 1103.

The precise meaning of the word "willfully" depends upon the context in which it is used.[2] In view of the amendment of the above quoted statute from which Section 911 was derived, we think it clear that the government in a prosecution under Section 911 need not show that the misrepresentation was made for a fraudulent purpose, and that "willfully" as used in this section means only that it must be proved beyond a reasonable doubt that the misrepresentation was voluntarily and deliberately made.[3]

Appellant's contention is that the prosecution failed to maintain its burden of proof on this issue since it offered no direct evidence that he "willfully" signed a printed renewal application for a state license costing but five dollars to sell beverages at a store in Oakley owned by himself and other partners.

This application contained twelve questions, the eighth being, "Are you a citizen of the United

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[2]See, e.g., Screws v. United States, 325 U.S. 91, 101 (1945); United States v. Illinois Central R.R., 303 U.S. 239 (1938); United States v. Murdock, 290 U.S. 389 (1933).

[3]DePratu v. United States, 171 F.2d 75 (Cir. 9, 1948); United States v. Franklin, 188 F.2d 182 (Cir. 7, 1951).

States?", to which the answer typed in on the application form when appellant signed it is "yes".

The application appellant signed contains the following:

> "I have read the foregoing application and know the contents thereof and such and all of the statements therein made are true; . . . that no person other than the applicant or applicants has any direct or indirect interest in the applicant's or applicants' business to be conducted under the license(s) for which this application is made."

The uncontradicted testimony summarized by the court is that the appellant is:

> ". . . the president of several corporations operating supermarkets as well as engaged in the business of General merchant, grocery store, meat market, furniture store, drug store, department store, cattle business, rancher, and Northwestern Development Company, uranium business, farmer, and . . . has amassed a fortune of half a million dollars while so engaged. . . ."

Also uncontradicted is the testimony of appellant's agent that in the course of his business, appellant signs 200 to 300 business documents a week.

One Helton, who was supervisor of the partnership's many stores, seeking a renewal of the five dollar state license to sell alcoholic beverages at the partnership's Oakley store applied therefor to the office of the State Board of Equalization at Martinez. Helton testified that a clerk in the office of the Board typed up an application form to be signed by appellant, and advised

Helton that the form required the verified signature of a member of the partnership. Although California law requires that the names of all partners appear on the form, only appellant's name was typed thereon by the clerk who further typed "yes" on the form in answer to the printed question. "Are you a citizen of the United States?" Helton stated he then took the filled-in application to appellant's office where, without reading it, appellant signed it. Thereafter Helton took it to a notary who signed the form's verification though appellant never appeared before him. Helton thereafter mailed it to Sacramento.

The above testimony, unshaken on cross-examination, might nevertheless be disbelieved by the judge and the question would then arise whether eliminating that testimony the mere signed document itself proved willfulness. We think under the above cases that it does not.

The government contends, however, that the record contains ample evidence of appellant's other misrepresentations concerning his citizenship which is admissible to negate appellant's contention that the misrepresentation with which he is here charged resulted from mere carelessness and inadvertence.

The history of appellant's career in this country as it appears in the record reveals that appellant's false statement as to his citizenship in the application for the license was neither the first nor the last occasion on which appellant misrepresented not only his citizenship but his identity.

In 1929 appellant, born in China, was legally admitted to this country for permanent residence. Shortly after his arrival he met a Chinese United States citizen named Charlie Wah You. Appellant was understandably anxious to become a citizen and although it was explained to him that this was impossible, Charlie Wah You offered to consult an attorney to see what could be done. An attorney was retained, and on the basis of the perjured testimony of Charlie Wah You an order issued from the California Superior Court establishing appellant's birth in California as the son of Charlie Wah You. It appears that appellant subsequently consulted another attorney concerning the legality of this arrangement. Both the attorneys involved and Charlie Wah You have since died.

Thereafter appellant continued to identify himself under his "adopted" name as Donald or Sam Wah You or Wahyou. Under this name in 1947 he obtained, as a native citizen, a United States passport to visit Hong Kong. Both before and after the violation of Section 911 with which he is here charged, appellant in applications for life insurance represented himself as having been born in Sacramento, California.

Since the fact that appellant signed the license application is not disputed, and the only question here concerns his willfulness in so doing, it is clear that this evidence of the other transactions in which he made similar misrepresentations was properly admissible to negate his contention that he did so inadvertently. 2 Wigmore, Evidence §302, (3rd ed. 1940); McCormick, Evidence §164 (1954).

Appellant contends that there is no finding as to his willfulness and that the court confined itself to a criticism of his veracity in the following language:

> "On the contrary, his brash carelessness, if such be the case, emphasizes his criminality."

In this he ignores the finding in the judgment and commitment that,

> ". . . the defendant at Stockton, California, did *knowingly and unlawfully falsely represent himself to be a citizen of the United States* without having been naturalized or admitted to citizenship, or otherwise being a citizen of the United States." [Emphasis supplied.]

We conclude that this evidence clearly supports the trial court's conclusion that appellant willfully misrepresented his citizenship in signing the application, and appellant's conviction on Count One is therefore affirmed.

(Endorsed:) Opinion. Filed May 20, 1957.
Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

Chow Bing Kew, Appellant, vs. United States of America, Appellee.	No. 15,251

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Sourthern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court on the second count of the indictment be, and hereby is reversed, and it is ordered dismissed, and that the judgment of the said District Court on count one of the indictment be, and hereby is affirmed.

(Endorsed) Judgment
Filed and Entered: May 20, 1957
Paul P. O'Brien, Clerk.

Appendix B

Pertinent sections of the California Alcoholic Beverage Control Act (now Business and Professions Code, sec. 23000, et seq.) are as follows:

"Any on-sale license authorizes the sale of the alcoholic beverage specified in the license for consumption on the premises where sold. * * * " (Business and Professions Code, sec. 23396; derived from Chap. 1257, 1951 Stats., p. 3121-3122, sec. 6 (j)).

"A retail package off-sale beer and wine license authorizes the sale, to consumers only and not for resale, of beer in packages and in quantities of 31 gallons or less per sale and wine in packages and in quantities of 52 gallons or less per sale, for consumption off the premises where sold." (Business and Professions Code, sec. 23393; derived from Chap. 1257, 1951 Stats., p. 3121, sec. 6 (g)).

"No on-sale general license nor on-sale general license for seasonal business shall be issued to any applicant who is not a citizen of the United States, or to a corporation applicant, unless a majority of the members of the board of directors, and all of the persons other than directors, who are charged with the duty of managing or conducting the business of the licensee, are citizens of the United States. No on-sale general licensee nor on-sale general licensee for seasonal business shall knowingly employ any person to manage, direct or conduct the business who does not have the qualifications required of a holder of the license." (Business and Professions Code, sec. 23788; derived from Chap. 1566, 1947 Stats., p. 3221-3222, sec. 4).